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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL SCOTT ARCELUS,
Plaintiff,
v.
ALICIA BORREGO,
Defendant.

Case No. [16-cv-01430-JD](#)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

Michael Scott Arcelus, who is being held at Napa State Hospital, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

DISCUSSION

STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In this review, the Court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Although a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above

1 the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations
2 omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its
3 face.” *Id.* at 570. The United States Supreme Court has explained the “plausible on its face”
4 standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they
5 must be supported by factual allegations. When there are well-pleaded factual allegations, a court
6 should assume their veracity and then determine whether they plausibly give rise to an entitlement
7 to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

8 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that: (1) a right secured by
9 the Constitution or laws of the United States was violated, and (2) the alleged deprivation was
10 committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

11 **LEGAL CLAIMS**

12 Arcelus seeks monetary damages from his public defender due to her alleged poor
13 performance. However, a public defender does not act under color of state law, an essential
14 element of an action under 42 U.S.C. § 1983, when performing a lawyer’s traditional functions,
15 such as entering pleas, making motions, objecting at trial, cross-examining witnesses, and making
16 closing arguments. *Polk County v. Dodson*, 454 U.S. 312, 318-19 (1981). It matters not that the
17 public defender failed to exercise independent judgment or that she was employed by a public
18 agency; it is the nature and context of the function performed by the public defender that is
19 determinative under *Polk County*. *Miranda v. Clark County, Nevada*, 319 F.3d 465, 468 (9th Cir.)
20 (en banc), cert. denied, 540 U.S. 814 (2003).

21 Arcelus argues that the public defender failed in her duties regarding the annual review of
22 Arcelus’ confinement in a mental hospital when the confinement was extended. He argues that the
23 public defender failed to file a motion to dismiss and failed to present expert witnesses. Yet, the
24 public defender does not act under state law so Arcelus cannot proceed under § 1983. The
25 complaint is dismissed with leave to amend and Arcelus will be provided one opportunity to
26 address the deficiencies noted above.

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1 **CONCLUSION**

2 1. The complaint is **DISMISSED** with leave to amend. The amended complaint must
3 be filed within **twenty-eight (28) days** of the date this order is filed and must include the caption
4 and civil case number used in this order and the words AMENDED COMPLAINT on the first
5 page. Because an amended complaint completely replaces the original complaint, plaintiff must
6 include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th
7 Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to
8 amend within the designated time will result in the dismissal of this action.

9 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
10 Court informed of any change of address by filing a separate paper with the clerk headed "Notice
11 of Change of Address," and must comply with the Court's orders in a timely fashion. Failure to
12 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of
13 Civil Procedure 41(b).

14 **IT IS SO ORDERED.**

15 Dated: May 23, 2016

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JAMES DONATO
United States District Judge

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 MICHAEL SCOTT ARCELUS,
4 Plaintiff,
5 v.
6 ALICIA BORREGO,
7 Defendant.
8

Case No. [16-cv-01430-JD](#)

CERTIFICATE OF SERVICE

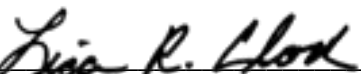
9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11
12 That on May 23, 2016, I SERVED a true and correct copy(ies) of the attached, by placing
13 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
15 receptacle located in the Clerk's office.
16

17 Michael Scott Arcelus
18 NAPA STATE HOSPITAL
19 2100 NAPA-VALLEJO HIGHWAY
20 NAPA, CA 94558-6293

21 Dated: May 23, 2016

22
23 Susan Y. Soong
24 Clerk, United States District Court

25
26 By: 
27 LISA R. CLARK, Deputy Clerk to the
28 Honorable JAMES DONATO